

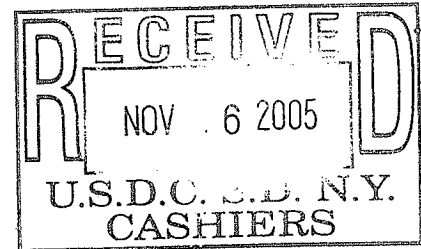
JUDGE CASTEL

05 CV 9663

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DANBY PRODUCTS, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X

DANBY PRODUCTS, INC.,	:	05 Civ. _____
	:	
Plaintiff,	:	
-against-	:	<u>COMPLAINT</u>
	:	
MEDITERRANEAN SHIPPING COMPANY, S.A.,	:	
	:	
Defendant.	:	
	:	
-----X		

Plaintiff, Danby Products, Inc. ("Danby"), sues Defendant, Mediterranean Shipping Company, S.A. ("MSC"), and alleges:

JURISDICTION AND VENUE

1. This is an admiralty and maritime action as provided in Rule 9(h), Federal Rules of Civil Procedure. This Honorable Court possesses jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1333.

2. As will be set forth below, the actions herein are all based on the terms of bills of lading issued by or on behalf of MSC. In accordance with Clause 2 of the

applicable bills of lading, exclusive jurisdiction for disputes arising thereunder is in this Court.

THE PARTIES

3. Danby is a corporation organized under the laws of the State of Delaware, engaged and specializing in the business of coordinating the overseas manufacture and domestic sale of compact refrigerators and other household appliances. Danby's principal place of business is at 101 Bentley Court, Findlay, Ohio, 45840-0669.

4. Defendant MSC is a foreign corporation engaged in the business of providing global shipping and delivery services around the world. Upon information and belief, MSC has a place of business at 420 Fifth Avenue, New York, New York 10018.

5. Defendant MSC is in the business of a common carrier and conducts business with respect to shipments to, from and within the State of New York and the United States as a whole within the meaning of Rule 4(k)(2), Federal Rules of Civil Procedure.

GENERAL ALLEGATIONS

6. The individual claims asserted in this action by Plaintiff Danby arise from certain contracts of carriage evidenced by certain through bills of lading entered into between Danby and Defendant MSC on or about October 6, 2004 and November 25, 2004. The contract of carriage and through bills of ladings, MSCUCP

174224 and MSCUCP 176294 (the "Bills of Lading"), are attached hereto as composite Exhibit "A."

7. The purpose of the Contract of Carriage was the shipping and transport by Defendant MSC of washing machines and dryers belonging to Danby from Koper, Slovenia, to Ottawa, Ohio (the "Goods").

8. The terms of the Bills of Lading specified Defendant MSC as the carrier, the port of discharge as New York, and the place of delivery as Ottawa, Ohio.

9. On or around November 7, 2004 (MSCU CP174224) and December 26, 2004 (MSCU CP176294), Defendant MSC delivered the Goods to the port of discharge of New York.

10. At or around those dates, pursuant to paragraph 24 of the Bills of Lading, Danby's custom's broker, Fedex Trade Network ("FTN"), arranged for all custom formalities to be completed in New York and satisfied all necessary requirements pursuant to the relevant Bills of Lading.

11. Written confirmation of clearance by the United States Customs and Border Protection was provided to Defendant MSC by FTN.

12. However, despite receipt of the written confirmation of clearance, Defendant MSC erroneously designated the goods as remaining in bond.

13. Thereafter Defendant MSC, as carrier, transported the Goods from the port of discharge of New York to Columbus, Ohio.

14. Because of the erroneous designation by Defendant MSC that the Goods were in bond, the Goods were improperly detained in Columbus, Ohio and stored by an entity known as Trimodal Services, Inc. ("Trimodal").

15. After being notified of the detainment, on or around January 24, 2005, Danby requested Defendant MSC's assistance and cooperation pursuant to its delivery obligations in accordance with the through Bills of Lading in securing the release of the Goods.

16. Defendant MSC failed to provide such cooperation and the Goods remained detained.

17. In order to have the Goods released, Danby was forced to incur accrued costs of \$41,275.00, which it paid under protest to Trimodal, in order to release the detained Goods.

18. Danby obtained validation that the Goods should not have labeled by Defendant MSC as in bond, but rather confirmed the Goods had been cleared by the United States Custom and Border Patrol and that this information had been given to Defendant MSC.

19. Danby requested Defendant MSC reimburse Danby for the costs Danby incurred in securing the release of the Goods; however, up until and at the time of filing this action, Defendant MSC has refused to reimburse Danby for those damages.

20. As a result of Defendant MSC's breach of the Bills of Lading, Danby has been damaged.

21. All conditions precedent to the bringing of this action have occurred, or have been waived by the Parties.

22. Danby sues on its own behalf and as agent and trustee for and on behalf of anyone else who may now have or hereafter acquire an interest in this action.

**CAUSE OF ACTION BY DANBY
AGAINST MSC FOR DAMAGES
BASED ON BREACH OF CONTRACT**

23. Danby re-alleges and reincorporates paragraphs 1 through 22, as if fully set forth herein.

24. Danby and Defendant MSC entered into an agreement for the proper shipment of goods from Koper, Slovenia to the place of delivery in Ottawa, Ohio.

25. Defendant MSC breached that agreement by failing to properly designate the shipped goods.

26. Due to Defendant's MSC breach of the agreement, Danby was damaged in that it was forced to pay storage and other charges in order to have the goods released.

WHEREFORE, Danby demands judgment against Defendant MSC for all damages, together with interest, costs and all further relief the Court deems just.

Dated: New York, New York
November 15, 2005

HOLLAND & KNIGHT LLP

By 

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DANBY PRODUCTS, INC.

TO: Mediterranean Shipping Company, S.A.
c/o Mediterranean Shipping Company (USA) Inc.
420 Fifth Avenue
New York, NY 10018

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Exh "A"

MEDITERRANEAN SHIPPING COMPANY S.A., Geneva				ORIGINAL BILL OF LADING MSCUCP176294	
IS IT PORT-TO-PORT SHIPMENT? (Fill in Boxes 7 & 8) Tick →		COMBINED TRANSPORT SHIPMENT? (Fill in Boxes 5, 6, 9 & 10) Tick → <input checked="" type="checkbox"/>		N° of original Bol (number & words) 3/THREE	
(1) SHIPPER (Full details) PARTIZANSKA CESTA 12 SI 3503 VELENJE SLOVENIA		(2) CONSIGNEE (Not Negotiable unless «To Order of...») DANBY PRODUCTS INC. P.O. BOX 669 101 BENTLEY COURT, FINDLAY MR. BILL 45839-0669 OHIO, USA		419-425-8629	
(3) NOTIFY (No responsibility shall attach to Carrier or to his Agent for failure to notify) DANBY PRODUCTS INC. P.O. BOX 669 101 BENTLEY COURT, FINDLAY MR. BILL 45839-0669 OHIO, USA		(4) SPACE FOR CARRIER'S AGENTS ENDORSEMENTS (FCL/FCL, SLSC) FCL/FCL SHIPPER'S LOAD STOWAGE AND COUNT SAID TO CONTAIN, THE CARRIER HAD NO MEANS TO VERIFY SHIPPER'S REPRESENTATION AND THE LATTER TO BE ULTIMATELY RESPONSIBLE FOR SHORTAGES, ESTABLISHED AT DESTINATION IN CASE THE CONTAINER IS DISCHARGED WITH THE SAME SEAL AS NOTED ON THIS BILL OF LADING.		419-425-8629	
(5) PRE-CARRIED BY (Combined Transport only) TRUCK		(6) PLACE OF RECEIPT (Combined Transport only) KOPER, SLOVENIA			
(7) PORT OF LOADING KOPER, SLOVENIA		(8) PORT OF DISCHARGE NEW YORK, NY			
(9) PLACE OF DELIVERY (Comb. Trans. only) OTTAWA, OHIO, USA		(10) MODE OF ON-CARRIAGE (Comb. Trans. only) TRUCK		Shippers Ref.	
(11) VESSEL & VOY. N° MSC ANASTASIA 171A		(12) AGENTS AT PORT OF DISCHARGE/DELIVERY		Agents ref. 960 24048 539 MSC 18573	
(14) CARRIER'S RECEIPT (Continued on attached Bill of Lading Rider page(s), if applicable)				(13) All details shown in Box 13 are furnished by the Shippers, being their Memoranda. Quantity, Condition, Contents and all other information shown in Box 13 are unknown to the Carrier, who has no means to verify their correctness and does not acknowledge them. The statements of the Shippers in Box 13 do not engage the Carrier contractually or in any other manner.	
Identity Marks of Cont. or other packages and seal number(s)	Corresp. number of cont. or other packages	Total number of cont. or other packages received by the carrier	Place of Receipt	Cargo Description (Continued on attached Bill of Lading Rider page(s), if applicable)	Cargo Gross weight Measurement
AS PER SPECIFICATION ATTACHED				x 40' CONTAINER(S) AS PER SPECIFICATION ATTACHED PURCHASE ORDER NUMBER 02-374 L/C NO. R350731 DATED 04/10/13 CER OTTAWA, OHIO, USA PLACE OF DELIVERY: DANBY PRODUCTS INC. 677 WOODLAND DRIVE OTTAWA, OHIO, USA SHIPPED ON BOARD 25.11.2004 FREIGHT PREPAID MSC KOPER d.o.o.	KGS 29912.4 CBM 200.000
				TARA WEIGHT	17600
				TOTAL GROSS WEIGHT (CARGO+TARE)	47512.4
(15) FREIGHT & CHARGES («PAYABLE» signifies INTENTION. Cargo shall not be delivered unless Freight & Charges are paid)					
Specification of Freight & Charges		Basis	Rate	PAYABLE at	
				POL	POD ELSEWHERE
Ad Valorem charges					
Declared value:		TOTAL FREIGHT & CHARGES			
<small>IN ACCEPTING this Bol, the Merchant expressly agrees to be bound by all the terms, conditions, limitations and exceptions, whether printed, stamped or written hereon and on Page 1, and in particular agrees that the Carrier shall have the right, at his sole discretion, to stuff cargo in containers and to carry on deck containers of all kinds including trailers, tanks, flats, canvas tops, pallets, vehicles and boats or similar articles used to transport goods. RECEIVED FOR SHIPMENT in apparent external good order and condition the containers, packages, units bearing the marks and/or numbers shown in Box 14, said to contain the quantity of goods, weights and measurements stated by Shippers in Box 13, which participate the Carrier has neither checked nor verified.</small> <small>IN WITNESS whereof, the no. of Original Bills of Lading shown at the top right corner of this contract have been signed. If this is a negotiable (To Order) Bol, the goods will only be delivered if one original Bol, properly endorsed by the Shippers and/or by the bank concerned (and not by the Notify Party), is surrendered, the others to be considered null and void.</small>					
PLACE AND DATE OF ISSUE KOPER 2004.11.25		SHIPPED ON BOARD DATE 2004.11.25		Signed on behalf of the Carrier MSC Mediterranean Shipping Co SA, Geneva by: As agents: MSC KOPER d.o.o.	

DEFINITIONS AND USES. The Contract is between the Merchant and the Carrier, binding on behalf of the Carrier, where the term "Merchant" includes in this Bill of Lading, hereafter "B/L," it shall be deemed to include the Shipper, the Consignee, the Holder or Endorsee of the B/L, and all persons claiming through them by way of assignment or otherwise. Where the word "Carrier" means the vessel and her owner or demise charterer, or whom they employ, (whose liability under this B/L, is shown) as well as agents available from Lloyd's Register of Ships or from Mediterranean Shipping Company (hereafter "MSC"), MSC shall act as Agents on the owner or demise charterer in arranging the transport covered by this B/L, if however, it should be a benefit for any reason, that other carriers or demitise charterers are engaged by the Merchant as co-carriers, then such carrier, than any party shall have the advantage of all the exceptions and limitations applicable to the Carrier herein. Goods included in the cargo shipped under this contract shall include any goods whether or not supplied by or on behalf of the Carrier. "Container" includes any container, trailer, transportable tank, liftvan, pallet flat or any similar article of transport used to consolidate goods.

(c) Carrier shall not be responsible for damage to cargo shipped in ordinary containers due to ambient low or high temperature.

15. **SPECIAL CARE.** For theft and loss of gold, silver, precious metals, in a manufactured state or not, or such objects, ornaments, watches, furs, lacres, jewels, precious stones, securities, paper money, documents or other papers of value, oil paintings, porcelain, glassware or other precious articles or valuable articles and for damage to precious articles easily damageable, the Carrier is responsible for the loss or destruction of the articles so declared to him below or at any time of reception of the cargo and inserted in the Bill of Lading and provided that the goods are not damaged by fire, theft or pilferage. The weight of the goods is Standing per cubic foot measurement, or per cwt for weight cargo, is classed as precious. Money and all objects of value must be placed in double bags with inside seals, or in boxes, both sealed with wax and the seal must be reproduced on the Bill of Lading and shipped in a strong and secure container. The present B/L is deemed to become automatically null and B/L document of title in respect of such cargoes, but to lapse the substance of a non-representative of the goods, the Hague-Visby Rules, the COGSA, which shall not apply.

16. **DECK CARGO AND LIVE ANIMALS.** All goods stated herein to be carried on deck, and live animals, birds or fish are received, handled, stowed, carried, kept and discharged at Merchant's risk and the Carrier shall not be liable for loss thereof, damage or delay whatsoever and howsoever occurring even though resulting from unseaworthiness of the ship or from the negligence of the Carrier, his servants or agents or in case of deviation of the ship.

17. **CONTAINERS.** The Merchant shall have the responsibility for inspecting before use any container furnished by the carrier to ascertain its suitability for the purpose of the carriage of the Merchant's goods and to ascertain that it is clean and intact. Acceptance of the container by the Merchant shall be *prima facie* evidence of its suitability and good condition. If the shipper or his servant stows the container, the Merchant shall be responsible for proper stowage and securing of the goods to insure ventilation and to avoid shifting, damage or loss of the goods. If the carrier or his servant stows the container, the Merchant shall be responsible for proper securing, or for any injury to personnel caused by the goods or their securing, or for any damage to the container or to other property, or for any damage to or loss of the goods or their securing, or for any damage to or loss of the carrier's property or goods, the carrier for all damage and loss sustained by the carrier and/or his subcontractors, which may be caused by the Merchant's servants.

10. FREIGHT & WAR RISKS CHARGES: Freight hereunder shall be considered completely earned upon receipt of the goods by the Carrier, whether the goods are to be repaid or sold, and the Carrier shall be entitled to all freight and charges due hereunder, whether actually paid or not, under all circumstances, ship and/or cargo lost and/or damaged, and whether or not abandoned. All freight and charges shall be paid without any offset, counterclaim, or deduction when due. The Carrier shall have a lien on the goods for non-payment of the freight charges, and the Merchant shall be liable for legal fees and expenses if the Carrier is forced to sue for payment of the freight charges. The Merchant shall be responsible for the payment of all war risks charges released by the Carrier. The Merchant shall reimburse the Carrier in proportion to the percentage of the increase of war risk insurance premium and war risk increase of the values of the Master, officers and crew and for any increase of the cost of bunkers and for deviation or delay caused by or war perils operations or by government directions in this respect.

19. **LIABILITY OF SERVANTS AND SUB-CONTRACTORS.** It is hereby expressly agreed that no servant or agent of the Carrier, including any independent sub-contractor employed by the Carrier, including security guards, charterers and participating third, air crew, pilots, flight attendants, ground crew, or any other personnel, shall be held liable for any loss or damage or delay to or loss of or damage to or delay in delivery of any cargo or other property or any loss or damage to or delay in delivery of any cargo or other property of whatsoever kind arising or resulting from the performance of the contract of carriage by the Carrier or its servants or agents in connection with its responsibility and, without prejudice to the generality of the foregoing provisions in this clause every damages or loss or damage to or delay in delivery of any cargo or other property shall be deemed to be the responsibility of the Carrier and its servants or agents and every right of recourse from liability, defence and immunity of whatever nature shall be deemed to be the responsibility of the Carrier or its servants or agents. The Carrier shall not be liable for any loss or damage to or delay in delivery of any cargo or other property of whatsoever kind arising or resulting from the performance of the contract of carriage by the Carrier or its servants or agents in connection with its responsibility and, without prejudice to the generality of the foregoing provisions of this clause the Carrier is or shall be deemed to be acting as agent or trustee (as the case may be) for the benefit of the cargo owner or its agent or trustee (as the case may be) and independent contractors (as the case may be) and all such persons shall to this extent be deemed to be party to this Bill of Lading.

20. **SPECIAL CIRCUMSTANCES.** If during the voyage special circumstances occur with regard to the vessel and/or her cargo, or the vessel has to put into a port of distress or such like port, or if the vessel experiences exceptional delay at a port or place, the Master or Carrier at his sole discretion has the liberty, notwithstanding all measures for the common good of the vessel and cargo, to take such measures on behalf of the cargo as they jointly or severally consider necessary and desirable, such measures being for the benefit of the cargo and without prejudice to eventual indemnification in General Average. Regarding damaged cargo or cargo lost overboard, the Master or Carrier shall be liable to the cargo owner for the full value of such cargo without prejudice to the further transport of which is not to be considered as an event of loss. In the event of a general average sacrifice without prejudice to eventual indemnification, in General Average, full freight is still payable. The Master or Carrier, in making arrangements for any lashing, dunnage, lashing or forwarding vessel or means of transportation not operated by the Carrier or Master, shall be considered solely the forwarding Agent of the Merchant and without any other responsibility whatsoever.

[illegible]

22. CLAIMS VALUATION, PACKAGE LIMITATION, TIME-BAR. The indemnity payable by the Carrier for non-delivery of the cargo in whole or in part is calculated at the option of the Carrier on the basis of the Invoice value or on the basis of market values at destination, less duties and expenses saved due to the shortage, except in USA jurisdiction where the sound market value at destination shall be determined. In any event, the Carrier's liability shall not exceed the usual sound market value of the goods at the time of shipment. If the market value could be ascertained, the Invoice value of the goods below than the usual sound market value at the time and place of shipment, the Carrier may elect to pay the Invoice value. However, if the market value is higher than the Invoice value, this provision shall apply to the common value accordingly. Neither the Carrier nor the ship shall in any way be responsible for becoming liable.

to disburse to or in connection with goods if an amount exceeding the limitation allowed under the Hague Rules or the Hague-Visby Rules (SCN limitation or the COGSA limitation), depending on which of these is contractually or compulsorily applicable, per package or per unit of weight, whichever is higher, shall be deemed to be the limit of the Carrier's liability for loss of or damage to the goods. **2.2.1.1.2.** The limit of liability shall be calculated on the basis of the net weight of the goods. However, calculation of value for the purpose of calculation of freight shall not be considered a decrease in the limit of liability. **2.2.1.1.3.** The limit of liability shall apply to all contractual claims as well as to any claims arising from their incurrence. In cases where goods are stored in a warehouse, the limit of liability shall apply to the goods as stored in the warehouse. **2.2.1.1.4.** The limit of liability shall not apply to claims for loss of or damage to goods which are not insured or for which no insurance policy has been issued on the face hereunder and extra charge paid. The words "customary freight unit" shall mean (under COGSA) "measurement customarily used to calculate freight. Where the goods have been packed into sealed containers (other than bulk containers), the measurement shall be based on the number of such containers." **2.2.1.1.5.** The limit of liability of the Carrier's liability, since the Carrier cannot verify its contents. If the Merchant has a shortage in goods or number of packages, the Carrier shall have the option to provide as substitute any surplus goods of similar kind and quantity (other than in bulk) or to provide as substitute any surplus packages of similar kind and quantity (other than in bulk).

after delivery of the goods, and in any case within 3 running days from the date of delivery as defined in Clause 7, and the Carrier shall be obliged to participate, at his option, in a joint survey. The cargo is otherwise prima facie considered damaged by the Carrier in the event of a claim being made by the cargo owner. Claims are to be addressed to the MSC Agent supported by, at least, the following documents: Claims narrative identifying the cargo, the date of delivery, the date of receipt, the date of discovery of the damage, the damaged goods, Letter of Subrogation, if any, survey reports. In any event, the Carrier shall be discharged from all liability if suit is not commenced within one year after delivery of the goods or the date that the goods should have been delivered, for claims relating to cargo damage or loss. Claims for cargo damage or loss must be made within 60 days of the date of delivery of the goods. Agreed claims will be settled by the Carrier only with the cargo owner or its insurer, with the Shipowner's approval. The Shipowner, POL or with the Consignees at the POD; but not with both. Settlement of an agreed claim by the Carrier with either of the above fully discharges the Carrier from all and any liability for the same loss or damage under this BCL.

23. **CARGIES.** All expenses of tallying, measuring, weighing, tarring, repairs, repackaging, sewing etc., due to causes beyond Cargies' liability, customs and other duties and/or formalities at wharves, docks, stamps and all such charges, are always for account of the cargo. The Danish "Cargo duty" at the port of Copenhagen and Danish provincial ports to be paid by receivers. Loading and discharging of the cargo is the responsibility of the consignee. The Cargies are not liable for any loss or damage to the cargo caused by the authorities at any port or by the customs or other authorities, or by the actions of any other persons, or by any fire or other damage to the goods as a result of opening, unpacking, inspection or re-packing. The Carrier, acting as Agent and on behalf of the Merchant in this respect, shall be entitled to recover from the Merchant all and any costs related to the above operations.

24. **CUSTOMERS, ETC.** The Shipper and Merchant and/or their Agents and Services including Freight Forwarders shall comply with the Customs, Police, Port and Discharge regulations, relative to the cargo, applicable in all ports under its Charter. The Merchant shall indemnify the Carrier for all costs and prejudice in consequence of the non-compliance with such regulations. Furthermore the Merchant shall pay for and indemnify the Carrier for all costs, duties, fees, dues, fines, taxes, expenses (including without prejudice the expenses of the Carrier) and/or charges (including unloading), imposed for whatsoever reason by one or any of the authorities mentioned above, in connection with the cargo, and/or equipment, and/or the vessel, and/or the cargo, and/or the liability that arises as a result of liability, income or insufficient marking, numbering or addressing of the goods, and shall indemnify the Carrier in respect thereof. The Carrier shall have the right before delivery, to ask for a deposit and/or sufficient security in accordance with clause 25 of this contract for any such duties and fines imposed or expected to be imposed including equipment damage.

25. **SECURITY AND LIEN.** (a) If the freight and any further charges or expenses incurred by the Carrier that are due, have not been paid or in case the freight is payable by a party other than the receiver, including freight to be prepaid, and if advice of payment has not yet been received from the Carrier, before the discharge of the cargo is commenced or a claim is created, a coast or other lien shall not be subject for the freight, charges and expenses. If no sufficient deposit or other satisfactory security is given by the Merchant, the Carrier is at liberty to discharge and store the cargo under the custody of the local sheriff, at the expense and at the risk of the Merchant, and to place a lien upon goods or documents, which shall survive delivery, for any claims or amounts due by the Merchant to the Carrier under this bill of lading. (b) The Carrier shall not be bound to deliver the goods to the consignee under this contract and costs of recovery shall be borne by the Merchant. (c) The Carrier shall not be bound to deliver by auction to cover such claims or amounts, without notice to the Merchant. If, on sale of the goods, the proceeds fall to cover the amount due and costs and expenses incurred, the Carrier shall be entitled to recover the difference from the Merchant. (d) The Carrier

shall have a lien upon the goods or documents that survive delivery in respect of outstanding sums due from the Merchant under other B/L contracts (e.g. due in respect of previous carriage contracts). (iv) The Carrier shall have a lien upon the goods in respect of all sums payable to the Carrier under this B/L also in respect of General Average and Salvage contributions, together with the costs of maintaining the goods in storage and recovery costs thereof, including equipment demurrage (see Clause 26).

to York Antwerp Rules 1974, except Rule XXII thereof, at the place specified in the bill of lading, and subject to these Rules, according to the laws and usage at the port of New York, NY, USA. Average agreement or bond or such other or cash security as may be required by the Carrier, must be furnished before delivery of the goods. The adjustment made by the Average adjuster on the bill of lading of the Carrier and the Merchant. In the event of accident, danger, damage, or disaster, before or after commencement of the voyage, the Carrier and the Merchant shall try to ascertain the cause of the loss or damage and the expenses of which, Carrier is not responsible, by statute, contract or otherwise, the goods, whether carried on or below deck, and the Merchant shall contribute with Carrier in General Average to the payment of any sacrifices, losses or expenses of a General Average.

that may be made or incurred, and shall pay salvage and special charges, including charges for handling, discharging and storage of the cargo following a General Average event, including equipment damage, incurred in respect of the goods. If the salvaging ship is owned or operated by Carrier, salvage shall be paid for as fully and in the same manner as if the salvaging ship belonged to strangers. The Goods, including containers not owned by the Carrier, shall pay their contribution to General Average even when such average is the result of fault, neglect or error of the Master, pilot or crew. The Merchant expressly renounces all codas, statutes, laws and regulations, which might otherwise apply.

27. OTHER STANDARD CLAUSES EXPRESSLY INCORPORATED in this B/L are: "War Risk Clauses 1 and 2", "Both to Blame Collision Clause", "IG of P&I Clubs Clause on Financial Responsibility in Respect of Pollution (all ships other than self propelled and non-self propelled tank vessels) per BIMCO wording 10.01.2001".

28. FIRE: Carrier shall not be liable for any loss or damage to goods occurring at any time, even though before loading or after discharge from the vessel, by reasons or by means of any fire whatsoever, unless such fire shall be caused by the actual fault or privity of the Carrier.

29. **MERCHANT'S WARRANTY:** The Merchant hereby expressly warrants that he has proper authority in relation to the goods which are shipped under this B/L and holds the Carrier fully harmless in respect of any claim arising from the Shipper or Consignee not

30. **EQUIPMENT DEMURRAGE:** Before loading the Carrier allows to Merchant three days container utilisation (in which the day of collection is included) to load or discharge cargo in the container. After this period, the Merchant shall be liable to pay to the Carrier a demurrage charge at the rate of \$100 per container per day.


or collection ex-quay is included) for demurrage. In addition the Carrier allows a demurrage-free period in accordance with the tariff of the manifested destination and as advised by the local MSC Agent, counting from the day of discharge ex-vessel. Demurrage is levied thereafter for container, trailer and other equipment. All containers shall be the joint and several responsibility of the Shipper and the Consignee and shall be returned clean and undamaged in a place specified by the Carrier.

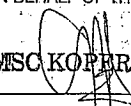
and the Consignee and shall be re-delivered clear and undamaged to a place nominated by the Carrier, failing which the Shipper and the Consignee shall be jointly and severally liable for all the costs of replacement, transportation, and repair, including legal costs.

31. FINAL AGREEMENT: All prior agreements, Dock Receipts or Freight Bookings of the shipment of the goods and all other contracts

Agreement is superseded by this Bill of Lading Contract or Way Bill Receipt which constitutes the Final Agreement between the Carrier and the Merchant. The terms of this Contract shall be severable, and if any provision hereof is held to be invalid or unenforceable, such holding shall not effect the validity or enforceability of any other provisions or parts of this Bill of Lading or Way Bill. Any change

to this B/L must be in writing and consented to by signature of or for the Master.

 MEDITERRANEAN SHIPPING COMPANY S.A., Geneva				ORIGINAL RIDER PAGE to BILL OF LADING or WAY BILL, Page n° 1 of 3		
(14) CONTINUATION OF CARRIER'S RECEIPT 16573 / 45839-0669			(13) CONTINUATION OF SHIPPERS MEMORANDA The contents in this section are deemed to be a natural continuation of the information provided by Shippers in Box 13 of the Bill of Lading shown and are governed by the same reservations of the Carrier as stated in Box 13 and by all the agreed terms and conditions under the Contract of Carriage by Sea, pages 1 and 2.		Reference number of Original Bill of Lading or Way Bill: MSCUCP176294	
Identity Marks of Cont. or other packages and seal number(s)	Corresp. number of cont. or other packages	Total n° of cts or other packages received by the carrier	Haz Code	Cargo Description (Continued on attached Bill of Lading Rider page(s), if applicable)	Cargo Gross weight	Measurement
MSCU 837290-5 SEAL 1174276		1		X 40' HIGH CUBE SAID TO CONTAIN 126 PIECES MODEL DWM5500W-1 WASHING MACHINE	10168.2	50.000
MSCU 866043-4 SEAL 1174259		1		X 40' HIGH CUBE SAID TO CONTAIN 126 PIECES MODEL DWM5500W-1 WASHING MACHINE	10168.2	50.000
MSCU 936868-5 SEAL 1174224		1		X 40' HIGH CUBE SAID TO CONTAIN 126 PIECES MODEL DCD5505W-1 ELECTRIC DRYER	4788	50.000
MSCU 840641-4 SEAL 1174266		1		X 40' HIGH CUBE SAID TO CONTAIN 126 PIECES MODEL DCD5505W-1 ELECTRIC DRYER	4788	50.000

PLACE AND DATE OF ISSUE 20041125	SHIPPED ON BOARD MV MSC ANASTASIA 171A DATE 20041125	SIGNED ON BEHALF OF THE MASTER MSC AGENTS  MSC KOPER d.o.o.
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The carrier assumes responsibility for the safe loading, stowage, securing, lashing, unloading, unlash and unlash of the cargo in the containers or trailers which are not owned or leased by the carrier.

(c) Carrier shall not be responsible for damage to cargo shipped in ordinary containers due to ambient low or high temperatures.

(d) The Carrier shall not be responsible for loss or damage to fruit or vegetables due to deterioration, decay, rot, heat or frost, discoloration, change of skin texture, not for marked, out or stained bags or boxes or other packages of freight. Fruits, vegetables and other perishable Goods are carried expressly at the sole risk of the Merchant.

- [illegible]